

Message Text

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ACTION L-03

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FM AMEMBASSY MEXICO

TO SECSTATE WASHDC IMMEDIATE 8273

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FOR L PROF. VAGTS; JUSTICE MR. STEIN

E. O. 11652: N/A

TAGS: PFOR, MX

SUBJECT: NEGOTIATIONS TRANSFER OF SANCTIONS AGREEMENT

REF: GAITHER/VAGTS TTELECONS OCT 26 AND 27.

1. EMBASSY LEGAL ADVISER GAITHER ACCOMPANIED BY COUNSELOR FOR CONSULAR AFFAIRS MC ANINCH AND COUNSELOR FOR POLITICAL AFFAIRS STARRS, WENT TO FOREIGN RELATIONS WED, OCT 27 TO RESUME NEGOTIATIONS ON SUBJECT TREATY. ONLY MEMBER PRESENT ON GOM SIDE WAS AMBASSADOR ROSENZWEIZ DIAS. ARTICLE BY ARTICLE POINTS ARE AS FOLLOWS:

2. ARTICLE I: TRANSLATION OF WORD "SENTENCES" CAUSES SOME DIFFICULTY TO GOM DUE TO DIFFERING LEGAL SYSTEMS AND LEGAL USE OF THAT TERM. (UNDER MEXICAN USAGE, A "SENTENCE" INCLUDES A FINDING OF INNOCENCE). IT WAS AGREED THAT MORE ACCURATE TRANSLATION INTO SPANISH WOULD BE "LAS PENAS IMPUESTAS".

3. ARTICLE II: (1) EXPLANATION FOR THIS PARA WAS REQUESTED AND GIVEN, EMPHASIZING POTENTIAL DIFFERENCES IN SENTENCES AND CRIMES.

(THIS SUBJECT DISCUSSED SEPTEMBER MEETING.) NED FOR USG OF "PRESENCE OF INTERSTATE COMMERCE" ALSO GIVEN BUT
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TRANSLATION SEEMS POSE GOM PROBLEM. EMBASSY WILL

ASSIST WITH SOME OF SPANISH TEXTS OF EXTRADITION TREATIES.

(6) DEFINITION OF "COLLATERAL ATTACK" GIVEN. AGREED THAT "APPEAL AND COLLATERAL ATTACK" WOULD BEST BE TRANSLATED AS "APELACION, RECURSO O JUICIO". THE LATTER TWO TERMS COVER "AMPAROS". THE WORD "PENDING" UNDER MEXICAN USAGE MEANS ANY REMEDY WHICH MAY ALWAYS BE PURSUED AND IT WAS AGREED THE INTENTION OF THE PARTIES WOULD BEST BE TRANSLATED WITH "PENDIENTE DE RESOLUCION".

4. ARTICLE II.

(2) THIS CONTINUES TO BE MAIN AREA OF CONCERN WITH STRONG EXPRESSION THAT BOTH ALTERNATIVES NOW IN TEXT PRESENT EITHER LEGAL OR POLITICAL DIFFICULTIES. US DEL INFORMALLY PROPOSED FOLLOWING WHICH APPEARED TO BE ACCEPTABLE:
BEGIN QTE:

(2) EVERY TRANSFER UNDER THIS TREATY SHALL BE COMMENCED BY THE AUTHORITY OF THE TRANSFERRING STATE. NOTHING IN THIS TREATY SHALL PREVENT AN OFFENDER FROM SUBMITTING A REQUEST TO THE TRANSFERRING STATE FOR CONSIDERATION OF HIS TRANSFER. IN ANY CASE THE SPECIFIC CONCURRENCE OF THE OFFENDER SHALL BE OBTAINED. END QTE.

NEXT SENTENCE WOULD BE ALTERED AS FOLLOWS:

BEGIN QTE:

THE AUTHORITY OF THE TRANSFERRING STATE WILL TRANSMIT THE REQUEST, TOGETHER WITH ITS APPROVAL, THROUGH DIPLOMATIC CHANNELS, TO THE AUTHORITY OF THE RECEIVING STATE. END QUTE.

(5) THIS PARAGRAPH WOULD BE MOVED UP, PROBABLY BECOMING PARA (3).

(6) QUESTION WAS RAISED WITH RESPECT TO "A DEFINITE TERMINATION DATE", QUERRING WHETHER EACH SENTENCED DOES IN FACT SPECIFY A DATE AS OPPOSED TO A PERIOD OF TIME AS IS THE CASE WITH GOM SENTENCES. IT WAS AGREED THAT TO MORE ACCURATELY REFLECT THE SITUATION--AT LEAST IN MEXICO--THE PHRASE SHOULD READ, "HAS A SPECIFIED DURATION, OR SUCH A DURATION HAS SUBSEQUENTLY BEEN FIXED..."

5. ARTICLE IV.

(2) GOM NOTED THIS PARA SO COMPLETELY TIED TO CONTROL OF RECEIVING STATE THAT IT WOULD PRECLUDE CHANGES IN THE LAW WHICH, IN MEXICO, COULD LEAD TO A REDUCTION OR DISSOLUTION LIMITED OFFICIAL USE

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OF THE SENTENCE. GOM HAS, THEREFORE, PROPOSED TO INSERT AS A SEPARATE ARTICLE, THEIR FORMER ARTICLE 14. THAT ARTICLE READS AS FOLLOWS:

QTE ARTICLE XIV.

1. THE REQUESTING STATE SHALL PROMPTLY INFORM THE REQUESTED STATE OF ANY DECISION OR MEASURE TAKEN IN ITS TERRITORY BY VIRTUE OF WHICH A SENTENCE CEASES TO BE EXECUTABLE.

2. THE AUTHORITIES OF THE REQUESTED STATE SHALL CEASE
EXECUTION OF THE SENTENCE AS SOON AS THEY RECEIVE
NOTIFICATION OF SUCH A DECISION OR MEASURE. END QTE
(6) THE GOM AGREES IN PRINCIPLE TO THE REPORTING
REQUIREMENT BUT HAS REQUESTED THE U.S. TO CONSIDER AN
ADDITIONAL REQUIREMENT TO REPORT WHEN ANY DISPOSITION IS
MADE IN A CASE. U.S.DEL NOTED THAT THIS WOULD PROBABLY
CAUSE AN ADMINISTRATIVE BURDEN ON THE U.S., PARTICULARLY
IF THE OFFENDER WERE PLACED IN A STATE JURISDICTION. NO
AGREEMENT REACHED BUT U.S. DEL AGREED TO PASS TO
DEPARTMENT FOR VIEWS.

7. NEXT SESSION SCHEDULED FOR ELEVEN A.M. FRIDAY,
OCTOBER 29, MEXICO TIME. WOULD APPRECIATE COMMENTS/
INSTRUCTIONS BY COB OCTOBER 28 IF POSSIBLE.
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